

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TIMOTHY NELSON)	
Claimant)	
VS.)	
)	
CENTRAL FREIGHT LINES, INC.)	Docket No. 239,096
Respondent)	
AND)	
)	
INDUSTRIAL INDEMNITY COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Steven J. Howard's December 29, 1998, preliminary hearing Order.

ISSUES

The Administrative Law Judge authorized Barry Rose, M.D., of the Kansas City Bone and Joint Clinic, Inc. to treat claimant's injured right knee. Claimant alleges he injured his right knee at work initially on March 13, 1998, and then on two other occasions, July 17, 1998, and August 21, 1998.

Respondent admits claimant injured his right knee at work on March 13, 1998, but denies the July 17, 1998, and August 21, 1998, alleged accidents. Respondent argues claimant's March 13, 1998, right knee injury resolved and any further need for medical treatment is related to an intervening accident that occurred on July 4, 1998, while claimant was swimming at a lake, not associated with his employment. Respondent also raised timely notice of accident in his application for review but did not argue the notice issue in his brief. It appears that issue has been abandoned. Accordingly, the only issue the Appeals Board will address will be whether or not claimant's current need for medical treatment is related to his work-related accidents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the following reasons, the Appeals Board finds that Administrative Law Judge's preliminary hearing Order should be affirmed.

Claimant injured his right knee at work on March 13, 1998. Respondent provided medical treatment for this injury at the Occupation Health Services, Inc. Claimant was treated for swelling and an abrasion over the center of the patella of the right knee on only two occasions, March 13, 1998, and March 16, 1998. Claimant's right knee was wrapped and he was given ibuprofen for the pain. Claimant was discharged from care after the second examination on March 16, 1998.

Claimant testified his right knee continued to swell, pop, lock up, and at times would give out on him. He notified his supervisor of his continuing problems. His supervisor told him since he had been released from the respondent's doctors he would have to seek further medical treatment from his personal physician.

On May 8, 1998, claimant saw his family physician for continuing pain and discomfort in his right knee. The doctor prescribed Tylenol 3 with codeine for the pain.

Claimant's right knee locked up on him while he was swimming at a lake during the 4th of July holiday. However, claimant testified that episode was no different than other episodes he had previously experienced after his March 13, 1998, accident. Claimant also had his right knee give out on him at work on July 17, 1998, and August 21, 1998.

After those incidents, claimant again returned to Occupational Health Services, Inc. for treatment. At that time, claimant was seen by H. C. Palmer, M.D. The doctor had claimant undergo an MRI examination that revealed a Grade II myxoid degeneration involving the lateral and medial menisci, without definite evidence of a focal meniscal tear. Dr. Palmer then referred claimant to orthopedic surgeon Barry Rose, M.D.

Dr. Rose saw claimant on August 6, 1998, and August 27, 1998. Claimant gave Dr. Rose a history of an intermittent discomfort, progressive pain, and locking of his right knee since the March 13, 1998, accident. Because claimant did not improve with conservative treatment and the pathology was consistent with a probable lateral meniscus tear, Dr. Rose recommended claimant undergo a right knee diagnostic arthroscopy.

William G. Stueve, M.D., at the request of the respondent, examined claimant's medical treatment records. Dr. Stueve is also an employee of Occupational Health Services, Inc., but was not one of the physician who treated claimant. Dr. Stueve did not believe that claimant's current knee problems were related to his employment with the respondent.

The trier of fact in a workers compensation case is free to consider all the evidence and decide for itself claimant's percentage of disability. Medical testimony is not essential to the establishment of the existence, nature, and extent of claimant's disability. See Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991). The Appeals Board finds this principle also applies to causation questions.

In this case, the Appeals Board finds claimant's testimony is persuasive that his current need for arthroscopy surgery on his right knee is related to his work. After only two brief medical examinations and treatments for claimant's right knee injury, the physicians at Occupation Health Services, Inc. released claimant to return to work with no further treatment. However, claimant testified his right knee remained symptomatic and, in fact, he began to have problems with the knee locking up. Also on two occasions the knee gave out while he was at work. Although claimant's right knee also locked up while he was swimming over the 4th of July weekend, this incident was similar to other incidents that had occurred after the March 13, 1998, accident and was not of sufficient severity to constitute an intervening accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Steven J. Howard's December 29, 1998, preliminary hearing Order, should be, and same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Gary R. Terrill, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director